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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' PENSION
TRUST FUND, et al.,

Plaintiffs,

vs.

TERRASEARCH, et al,

Defendants.

Case No.: CV 10-04964 SBA (LB)

**STIPULATION FOR ENTRY OF
JUDGMENT AGAINST
TERRASEARCH, INC. AND 3 MAK
AND JUDGMENT; DISMISSAL WITH
PREJUDICE OF DEFENDANTS
TERRASEARCH GULF, A
CALIFORNIA PARTNERSHIP, DOE 1
TERRASEARCH GULF, A FOREIGN
PARTNERSHIP, SIMON MAKDESSI,
AND ISSAM MAKDISSY; AND
JUDGMENT AND ORDER OF
DISMISSAL**

IT IS HEREBY STIPULATED by and between Plaintiffs Operating Engineers' Pension Trust Fund, F.G. Crosthwaite and Russell E. Burns, as Trustees (collectively "Plaintiffs" or "Plan"), and Defendants Terrasearch, 3 MAK LLC, Terrasearch Gulf, identified in this action as a California partnership, Terrasearch Gulf, identified in this action as DOE 1 a foreign partnership, Simon Makdessi, and Issam Makdissy (collectively "Defendants") as follows:

1. On or about October 1, 2009, Defendant Terrasearch made a complete withdrawal from the Plan. As a result, Defendant Terrasearch became subject to withdrawal liability under ERISA §4203(a) (29 U.S.C. §1383(a)).

2. Defendant Terrasearch and its control group members were assessed withdrawal liability of \$2,671,570 ("Withdrawal Liability") by the Plan on July 27, 2010.

1 3. Terrasearch and 3 MAK LLC are members of the control group under ERISA
2 4001(b)(1) (29 U.S.C. §1301(b)) and thus, are treated as a single employer and are jointly and
3 severally liable for the withdrawal liability.

4 4. Defendants Terrasearch and 3 MAK LLC hereby agree to this Judgment entered
5 against Defendants Terrasearch and 3 MAK LLC in favor of Plaintiffs for the Withdrawal
6 Liability of \$2,671,570.

7
8 5. Defendants Terrasearch and 3 MAK LLC and any successors-in-interest and the
9 control group members of any successors-in-interest shall be bound by this Judgment.

10 6. Pursuant to the terms of the Settlement Agreement (“the Settlement Agreement”),
11 the parties hereby stipulate to dismissal of this action with prejudice as to Defendants Terrasearch
12 Gulf, identified in this action as a California partnership, Terrasearch Gulf, identified in this action
13 as DOE 1 a foreign partnership, and Simon Makdessi, and Issam Makdissy as individuals and as
14 control group members of Terrasearch and 3 Mak, LLC.

15
16 7. Each party to this action shall bear their own attorneys’ fees and costs arising from
17 or related to the Withdrawal Liability and/or this action.

18
19 8. In the event of the filing of a bankruptcy petition by Defendants, the parties agree
20 that any payments made under the Settlement Agreement, shall be deemed to have been made in
21 the ordinary course of business as provided under 11 U.S.C. §547(c)(2) and shall not be claimed
22 by Defendants as a preference under 11 U.S.C. §547 or otherwise. Defendants nevertheless
23 represents that no bankruptcy filing is anticipated.

24
25 9. Any failure on the part of the Plaintiffs to take action against Defendants under this
26 Judgment in the event of any breach by Defendants of any provisions herein shall not be deemed a
27 waiver of any remedies and rights available to the Plaintiffs under this Judgment in connection
28 with any subsequent breach by Defendants of any provisions herein.

10. All parties hereto represent and warrant that they have had the opportunity to be or have been represented by counsel of their own choosing in connection with entering this Judgment under the terms and conditions set forth herein, and that they enter into this Judgment voluntarily.

11. The persons executing this Judgment represent and warrant that they have the authority to enter into this Judgment on behalf of the parties hereto.

12. This Judgment may be executed in any number of counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

13. The parties acknowledge and agree that the Court retain jurisdiction to enforce the terms of the Settlement Agreement.

TERRASEARCH

3 MAK, LLC

TERRASEARCH GULF

Issam Makdissy
Dated: May __, 2013

Issam Makdissy
Dated: May __, 2013

Issam Makdissy
Dated: May __, 2013

Simon Makdessi
Dated: May __, 2013

Simon Makdessi
Dated: May __, 2013

SIMON MAKDESSI

ISSAM MAKDISSY

OPERATING ENGINEERS'
PENSION TRUST FUND

Simon Makdessi
Dated: May __, 2013

Issam Makdissy
Dated: May __, 2013

Russell E. Burns, Trustee
Dated: May __, 2013


F.G. Crosthwaite, Trustee
Dated: May __, 2013

JUDGMENT and ORDER OF DISMISSAL

Based on the foregoing, Judgment is hereby entered against Defendants Terrasearch and MAK LLC as stipulated above. In addition, this action is hereby dismissed with prejudice as to Defendants Terrasearch Gulf, identified in this action as a California partnership, Terrasearch Gulf, identified in this action as DOE 1 a foreign partnership, Simon Makdessi, and Issam Makdissy. The Court shall retain jurisdiction to enforce the terms of the Settlement Agreement and incorporated in this Judgment and Order.

IT IS SO ORDERED.

Dated: _6/6/13


HONORABLE SAUNDRA B. ARMSTRONG
UNITED STATES DISTRICT COURT JUDGE

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